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WRITER'S DIRECT DIAL NO.

November 8, 2010

Ms. Lisa P. Jackson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I am writing to express my strong support for the Draft Chesapeake Bay TMDL and EPA's evaluation of the state Watershed Implementation Plans (WIPs). As you know, Maryland has listed many of its Chesapeake Bay segments on its § 303(d) list as impaired for nitrogen, phosphorous, and sediment. Much of this impairment is attributable to upstream water pollution occurring in other states. Because the Bay receives about half of its total volume from freshwater tributaries, and about half of that fresh water enters the Bay from the Susquehanna River, Maryland's Bay segments have been adversely impacted by such upstream water pollution for over a hundred years. Maryland simply cannot ensure the attainment of its water quality standards through Maryland-only legislation, regulation, and enforcement. Instead, for the water quality of the Bay to improve in real and sustainable ways, all of the watershed states must be held accountable for their contributions to downstream pollution.

Effective and enforceable federal regulation of interstate pollution is an essential element of the Clean Water Act. Congress's "major purpose" in enacting the 1972 amendments to the Clean Water Act was "to establish a comprehensive long-range policy for the elimination of water pollution." S.Rep. No. 92-414, at 95, 2 Leg. Hist. 1511; *see also City of Milwaukee v. Illinois*, 451 U.S. 304, 318 (1981). Part of the comprehensive nature of the Clean Water Act is a series of provisions giving EPA responsibility over interstate disputes involving the violation of a receiving state's water quality standards.

City of Milwaukee v. Illinois, 451 U.S. at 325-26; *see also* 33 U.S.C. §§ 1342(b)(3), (b)(5), (d)(2)(A), and (d)(4). To some extent, these statutory authorities take the place of the federal common law remedies states previously possessed to address the pollution of their territorial waters from interstate sources. *Id.* With this enhanced oversight of interstate disputes, EPA has a responsibility to act when water pollution is a multijurisdictional problem and the jurisdictions involved have failed to act over a long period of time. *See Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517 (9th Cir. 1995); *Scott v. City of Hammond*, 741 F.2d 992 (7th Cir. 1984); *American Canoe Ass'n. v. EPA*, 54 F.Supp.2d 621 (E.D.Va. 1999). The Chesapeake Bay TMDL is an essential and necessary component in rectifying a long history of inaction and unenforceable voluntary commitments at the state and federal levels in the Bay watershed.

With the establishment of the Chesapeake Bay TMDL, I commend EPA for setting stringent standards and exercising oversight of state implementation of those standards. Unfortunately, several of the states' draft WIPs contain serious deficiencies, including, in some cases, a failure to even attempt to meet the jurisdiction-wide allocations set for them as part of the TMDL planning process. *See* Section 8, Watershed Implementation Plan Evaluation and Draft Backstop Allocations, *available at* <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b5e745>. I applaud EPA for identifying the inadequate plans and for creating backstop allocations for point sources that will ensure the reductions outlined in the Bay TMDL will be met within a reasonable time period. If the state WIPs do not improve significantly in their final form, EPA should maintain the backstop allocations it has identified. And if any state WIP departs even further from its allotted allocation in its final revision, EPA should impose additional requirements to create reasonable assurance that all TMDL allocations will be met.

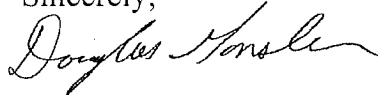
I also encourage EPA to take every step needed to ensure allocations are met in the future, including: increasing targeted federal enforcement actions against water and air pollution violators in the Bay watershed; exercising strict oversight of NPDES permits if they fall short of protecting the water quality standards of downstream states; exercising residual designation authority to extend NPDES permitting requirements to additional sources, especially sources within the agricultural sector; and seeking all appropriate remedies available within EPA authority to achieve Bay cleanup.

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If the Chesapeake Bay is to be restored to health, and the water quality standards of receiving states are to be met, EPA will need to fully exercise its authority under the Clean Water Act. Because states rarely have any economic or political incentives to protect more than their own state's natural resources, federal action is needed to ensure this protection, and to hold each state accountable for lax enforcement and permissive pollutant standards that disproportionately affect other states in the watershed. No state should be prevented from attaining its water quality standards because of the inadequacy of environmental policies and enforcement in upstream states.

EPA has the unique ability to enforce pollution limits across state boundaries to ensure a fair environmental playing field. I urge EPA to exercise this authority actively and consistently throughout the watershed, so that the downstream states like Maryland can face fewer cross-boundary impediments to improving water quality in the Chesapeake Bay in effective, lasting ways and prevent the ultimate tragedy of the commons.

Sincerely,



Douglas F. Gansler
Attorney General

DFG/caws
Attachment